



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 261 52248 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner:
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer of wireless accessories that seeks to employ the beneficiary as a purchasing manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel asserts that the petition was denied following the petitioner's response to a second request for further evidence, in which no questions were identified with regard to the regulatory criteria for H-1B eligibility. Counsel submits further documentation on parallel positions in similar firms.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2)) the petitioner's letter of support dated July 30, 2002; (3) the director's requests for additional evidence, dated August 22, 2002, and October 8, 2002; (4) petitioner's letters, dated September 24, 2002, and October 9, 2002, that respond to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a purchasing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's requests for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail assisting in the acquisition of raw materials, semi-finished products, and equipment from international suppliers, as well as in production planning. The petitioner provided a further breakdown of the beneficiary's duties in twelve areas:

1. Researching trends in the wireless accessories supply markets for all regions of the U.S. and abroad;
2. Examining and analyzing statistical data-such as prices, sales, and distribution methods-to forecast future market trends;
3. Working proactively with the Production Department and the Customer Service Department to review and prioritize product requirements for domestic and international customer needs;
4. Working with suppliers and advising them of all priorities as needed or requested from production and customer service;
5. Acting as the key liaison between the petitioner and its suppliers to ensure a consistent corporate image;
6. Maintaining bi-weekly and seasonal reports for incomplete Purchase Orders and insuring that all suppliers are on time;
7. Managing domestic pricing and terms to assure budgeted cost levels are being attained;
8. Performing cost/variance analysis to evaluate actual cost versus forecasted cost, and determining if project cost/saving is accurate;
9. Managing the execution and "on time delivery" of raw materials and equipment;
10. Evaluating the Procurement Plan in conjunction with the Production Department to ensure the feasibility of the Master Production Plan;
11. Developing and presenting the Inventory Plan/Forecast for our products, and
12. Preparing reports and graphic illustrations for presentation to management.

In the petitioner's first response to the director's request for further evidence, the petitioner stated that the beneficiary did not do any actual marketing or sales of the petitioner's products and services. The petitioner described the position as a market research analyst, or business analyst. The petitioner then grouped the beneficiary's duties into the following six areas: researching trends; examining and analyzing statistical data; managing budget cost levels; performing cost and variance analysis; evaluating procurement plans; and developing inventory plans and forecasts. The petitioner stated that the position required at a minimum, a baccalaureate degree in business or management or their equivalents.

The director found that the proffered position was not a specialty occupation and referred to the description of purchasers and buyers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. Based on this document, the director noted that the industry-wide requirement for entry into the

occupation was not a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director disregards the employer's stated tasks, and requirements for the position, and uses a simplistic view of the job title to make his determination. Counsel also asserts that the director takes the *Handbook* information out of context, and provides no meaningful analysis of the duties, the industry, or the beneficiary's qualifications in his decision. Finally, counsel states that the director violated the petitioner's due process rights by not mentioning any regulatory concerns in the second request for further evidence.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

With regard to counsel's assertion that the director violated the petitioner's due process rights by not specifying particular concerns in the director's second request for further evidence, it should be noted that the director, in his first request for further evidence, requested evidentiary documentation in areas that are specifically related to the regulatory criteria. The receipt of a second request for further evidence prior to the issuance of a decision does not necessarily establish that all the questions raised in the first request were satisfactorily answered.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The director identified the proffered position as a purchaser or buyer, while the petitioner initially identified the position as a purchasing manager. In the response to the director's request for further evidence, the petitioner stated that the duties of the position were similar to those of a market research analyst or business analyst and that the beneficiary would primarily spend all of her time doing market research analysis.

With regard to the petitioner's description of the job as a market research analyst, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than

seek approval of a petition that is not supported by the facts in the record. For purposes of this proceeding, only the titles of purchasing manager and purchasers and buyers will be examined.

Upon review of *Handbook* classifications of both buyers and purchasing agents managers, and the job duties as described by the petitioner, the proffered position appears to be a purchasing manager who is also responsible for some market research and data analysis. For example, of the twelve original job duties outlined by the petitioner, ten duties involve the production and materials acquisitions needs of a manufacturing and distributor company, while the first two duties primarily involve market research and data analysis. The organizational chart submitted by the petitioner that indicates the beneficiary will supervise two existing positions within the petitioner's staff structure also provides weight that the position is beyond an entry-level position of purchasing agent.

The *Handbook* states that whether a person is titled a purchasing manager, buyer, or purchasing agent depends more on specific industry and employer practices than on specific job duties. The *Handbook* also states that most purchasing managers work with manufacturing companies. Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets.

With regard to training and other qualifications, the *Handbook* states that qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. With regard to manufacturing companies, such as the petitioner, the *Handbook* states that such companies put a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences, than do retail and wholesale companies. The *Handbook* establishes that for manufacturing companies, a baccalaureate degree in a specific specialty would be preferred for entry into the position. Nothing in the *Handbook's* classification establishes that a baccalaureate degree in a specific specialty is required for entry into the position. Thus, the petitioner has not established that the proffered position in fact is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted sixteen vacancy announcements for jobs entitled purchasing specialists, managers, or buyers, strategic sourcing specialist, or similar titles. Of these sixteen job listings, all stated that a baccalaureate degree was required; however, very few job announcements identified a specific academic specialty that was required for the respective position. As previously stated, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Several jobs do not appear to be parallel positions with similar firms. This is particularly true of job announcements for purchasing managers for telecommunications and aerospace technology firms. The job of strategic sourcing specialist with the Albrecht Group appears similar to the petitioner. The position would be involved in all aspects of the development and on-going sourcing strategy for an electronic manufacturing facility. This position required a graduate degree but the announcement identified no specific specialty. With regard to a candidate's required undergraduate degree, the company identified the specific baccalaureate specialties as supply chain management, engineering, business or equivalent experience. This job announcement also required at least three years of experience. Nevertheless, one job vacancy announcement is not sufficient to establish an industry standard. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner indicated in its letter of support for the petition that increasing sales and production made it necessary to hire a purchasing manager. Thus it appears that the proffered position is new. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. For example, while the petitioner stated that its product line includes more than 4000 items, the record is not clear as to what particular impact this number of products has on the complexity of the duties of the proffered position. There is also no clarification of the duties of the two persons to be supervised by the beneficiary, which would provide more information on the complexity of the beneficiary's position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.